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Tennman Productions, LLC; Justin Timberlake;
10 Spears King Pole, Inc.; and Britney Spears

11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**

13
14 LARGE AUDIENCE DISPLAY
15 SYSTEMS, LLC,

16
17 Plaintiff,

18 vs.

19 TENNMAN PRODUCTIONS, LLC,
20 JUSTIN TIMBERLAKE, BRITNEY
21 TOURING, INC., BRITNEY SPEARS,
22 STEVE DIXON and MUSIC TOUR
MANAGEMENT, INC.,

23 Defendants.

Case No. CV 11-03398 R (RZx)

24 **DECLARATION OF ANDREW S.
LANGSAM IN SUPPORT OF
DEFENDANTS' MOTION FOR
RECOVERY OF ATTORNEYS'
FEES, COSTS, AND EXPENSES**

25 *[Notice of Motion and Motion for
Recovery of Attorneys' Fees, Costs, and
Expenses and Memorandum of Points
and Authorities filed concurrently
herewith]*

26 **Hearing:**

Date: August 3, 2015

Time: 10:00 a.m.

Place: Courtroom 8

Spring Street Courthouse

DECLARATION OF ANDREW S. LANGSAM

I, Andrew S. Langsam, hereby declare as follows:

1. I am a partner with the law firm of Pryor Cashman LLP (“Pryor Cashman”), counsel of record for Defendants Tennman Productions, LLC, Justin Timberlake, Britney Spears, and Spears King Pole, Inc. (collectively, “Defendants”) in the above-captioned action. I have personal knowledge of the facts set forth in this Declaration, except for those matters stated to be based upon my information and belief, and if called upon to do so I could and would competently testify thereto.

2. I submit this Declaration in support of the concurrently filed Notice of Motion and Motion for Recovery of Attorneys’ Fees, Costs, and Expenses.

3. Attached hereto as Exhibit A is a true a correct copy of U.S. Patent No. 6,669,346 (the “Patent”), the patent in suit.

4. Attached hereto as Exhibit B is a true and correct recent copy of the Texas Secretary of State’s online summary records for the entity Large Audience Display Systems, LLC, retrieved on June 19, 2015.

5. Attached hereto as Exhibit C is a true and correct copy of the U.S. Patent Office’s web page, retrieved on June 25, 2015, indicating the October 21, 2009 assignment of rights associated with the Patent.

6. Attached hereto as Exhibit D is a true and correct copy of the U.S. Patent Office’s Bibliographic Data for the Patent, retrieved on June 30, 2015, indicating that the payment of the Patent’s maintenance fee will be late (i.e., subject to a surcharge) as of July 1, 2015.

7. Attached hereto as Exhibit E is a true and correct copy of the search results for a business entity search performed for “Large Audience Display Systems” via the California Secretary of State’s website.

1 8. Attached hereto as Exhibit F is a true and correct copy of the
2 January 24, 2013 Declaration of Clyde Tichenor, an expert whom Plaintiff utilized
3 during the course of the *inter partes* reexamination of the Patent before the U.S.
4 Patent Office.

5 9. Attached hereto as Exhibit G is a true and correct copy of Plaintiff's
6 Disclosure of Asserted Claims and Infringement Contentions, served in the Eastern
7 District of Texas on March 8, 2011.

8 10. Attached hereto as Exhibit H is a true and correct copy of Plaintiff's
9 Disclosure of Asserted Claims and Preliminary Infringement Contentions, served
10 in the Central District of California on January 12, 2012.

11 11. Attached hereto as Exhibit I is a true and correct copy of the *Inter*
12 *Partes* Reexamination Request, filed on behalf of the Defendants and the Los
13 Angeles Lakers, Inc. on November 11, 2011.

14 12. Attached hereto as Exhibit J is a true and correct copy of the
15 Defendants' Comments and Response, served September 26, 2012, to the Patent
16 Owner's August 27, 2012 Response to the U.S. Patent Office's July 27, 2012
17 Action Closing Prosecution.

18 13. Attached hereto as Exhibit K is a true and correct copy of the U.S.
19 Patent Office's Non-Final Office Action, mailed November 26, 2012, wherein the
20 Patent Office reopens the *inter partes* reexamination in response to Defendants'
21 September 26, 2012 communication (attached hereto as Exhibit I) and to Plaintiff
22 Patent Owner's August 27, 2012 communication. Please note that Exhibit K is
23 attached in two parts.

24 14. Attached hereto as Exhibit L is a true and correct copy of the U.S.
25 Patent Office's Action Closing Prosecution, mailed May 14, 2013, setting forth the
26 final findings of the Patent Office Examiners. Please note that Exhibit L is
27 attached in two parts.

1 15. Attached hereto as Exhibit M is a true and correct copy of the U.S.
2 Patent Office's Decision on Appeal, mailed November 3, 2014, containing the
3 unanimous decision of the Patent Trial and Appeal Board.

4 16. Attached hereto as Exhibit N is a true and correct copy of the
5 Defendants' Comments, dated April 17, 2012 to the U.S. Patent Office's
6 January 18, 2012 Non-Final Office Action and to Plaintiff Patent Owner's
7 March 19, 2012 Response thereto.

8 17. Attached hereto as Exhibit O is a true and correct copy of a December
9 17, 2009 email from Michael G. Burk, Esq., counsel for Plaintiff, to Andrew S.
10 Langsam, Esq.

11 18. Attached hereto as Exhibit P is a true and correct copy of a
12 December 22, 2009 email from Andrew S. Langsam, Esq. to Michael G. Burk, Esq.

13 19. Attached hereto as Exhibit Q is a true and correct copy of a
14 December 23, 2009 email from Michael G. Burk, Esq. to Andrew S. Langsam, Esq.

15 20. Attached hereto as Exhibit R is a true and correct copy of a January 26,
16 2010 email from Michael G. Burk, Esq. to Andrew S. Langsam, Esq.

17 21. Attached hereto as Exhibit S is a true and correct copy of detailed
18 daily time records for every Pryor Cashman timekeeper who has performed legal
19 services in connection with the defense of this case on behalf of Defendants Justin
20 Timberlake and Tennman Entertainment, LLC under client/matter number
21 10217.00005. A more detailed explanation of these records is set forth below.

22 22. Attached hereto as Exhibit T is a true and correct copy of detailed
23 daily time records for every Pryor Cashman timekeeper who has performed legal
24 services in connection with the defense of this case on behalf of Defendants
25 Britney Spears and Spears King Pole, Inc. under client/matter number
26 10634.00016. A more detailed explanation of these records is set forth below.

23. Attached hereto as Exhibit U is a true and correct copy of relevant records indicating the costs and expenses incurred during the course of this case on behalf of Defendants Justin Timberlake and Tennman Entertainment, LLC under client/matter number 10217.00005. A more detailed explanation of these records is set forth below.

24. Attached hereto as Exhibit V is a true and correct copy of relevant records indicating the costs and expenses incurred during the course of this case on behalf of Defendants Britney Spears and Spears King Pole, Inc. under client/matter number 10634.00016. A more detailed explanation of these records is set forth below.

25. Attached hereto as Exhibit W is a true and correct copy of the American Intellectual Property Law Association's 2013 Report of the Economic Survey.

**DECLARATION REGARDING REQUESTED ATTORNEYS' FEES,
COSTS, AND EXPENSES AND RELATED EXHIBITS**

26. Pursuant to the agreement between Pryor Cashman and Defendants, Pryor Cashman professionals (including attorneys, paralegals, and other support staff) record their time spent working on matters on a contemporaneous and daily basis.

27. With the agreement of all Defendants, substantially all work performed in this action has been split on a 50/50 basis between client/matter numbers 10217.00005 (Defendants Justin Timberlake and Tennman Entertainment, LLC) and 10634.00016 (Defendants Britney Spears and Spears King Pole, Inc.). The minor discrepancies between the exact amount actually billed to each set of Defendants have inevitably arisen as a consequence of some issues unique to one or the other Defendants, thus legal work being conducted for that Defendant was

separately recorded. As stated above, true and correct copies of all relevant time records are attached hereto as Exhibits S and T.

28. The date for the rendered legal services, the initials of the person providing the services, a.k.a. the timekeeper, a description of the provided legal services, and the time spent on the matter by the timekeeper, i.e., the relevant billed information, contained in Exhibits S and T come directly from Pryor Cashman's accounting system, and are an accurate reflection of information on invoices submitted to and paid by Defendants all in connection with the defense of Defendants by Pryor Cashman in this litigation. In some cases, the time and dollars billed are zero, which reflects the fact that the number of hours actually worked was written off before the bill was provided to Defendants.

29. The time records provided in Exhibits S and T have been reviewed and some descriptions of the provided services redacted only for privilege (such as attorney-client and work product) as necessary so as not to waive nor inadvertently disclose the same.

30. The timekeepers in Exhibits S and T are identified by their initials. Below is a table containing, in alphabetical order, the initials and names of each timekeeper as well as each timekeeper's position within Pryor Cashman:

Initials	Full Name	Position
AA	Anthy Antoniou	eDiscovery Manager
ASL	Andrew S. Langsam	Partner
BDR	Brad D. Rose	Partner
BEN	Barry E. Negrin	Partner
DC	Dasha Chestukhin	Associate
DZ	Darius Zolnor	Associate

Initials	Full Name	Position
EC	Erich Carey	Associate
EW	Elizabeth Warner	Associate
JRK	James R. Klaiber	Partner
JT	Jessica Tartanella	Court Clerk
LD	Laurie DeCanio	Paralegal
LED	Leighton E. Dellinger	Associate
MAT	Mark A. Tamoshunas	Of Counsel
MJN	Michael J. Niborski	Partner
OD	Orlando Dominguez	Litigation Support Analyst
PMA	Perry M. Amsellem	Partner
PZ	Philippe Zylberg	Special Counsel
RJD	Robert J. deBrauwere	Partner
RLM	Robert L. Michael Jr.	Paralegal
RO	Ryan Osterweil	Associate
RR	Rebecca Rothkopf	Associate
SAL	Suzie A. Latiff	Managing Clerk
SEB	Sarah E. Bell	Associate
SG	Stephanie Fereaud	Paralegal
SK	Stephanie Kline	Associate
YE	Yamilet Echeverria	Associate

31. I have been the lead counsel for this action since its inception in 2009. I have more than 35 years' experience as a patent attorney, and have handled complex U.S. patent litigation and related intellectual property matters (transactional, prosecution, and litigation) throughout that time. I have never been

1 sanctioned nor censured nor have any of my clients nor I been the subject of an
2 order requiring us to pay attorneys' fees to an opposing party. I am a graduate of
3 Carnegie-Mellon University (B.S. 1973) and George Washington University's
4 National Law Center (J.D. 1976). I am admitted to practice in the State of New
5 York and was, for years, also a member of the Bar of the Commonwealth of
6 Virginia and of the District of Columbia. I let the latter two lapse only as a
7 consequence of my recent absence from legal work in those jurisdictions. I am still
8 a member in good standing of the Bar of the State of New York, and am admitted
9 to practice before the U.S. Second Circuit Court of Appeals and the U.S. District
10 Court for the Southern District of New York. I am admitted to the U.S. District
11 Court for the Central District of California *pro hac vice*. I am also a practicing and
12 active U.S. patent attorney, registered to practice before the U.S. Patent Office
13 under Reg. No. 28,556. I have been a practicing U.S. patent attorney in the U.S.
14 Patent Office for over 38 years and have been litigating in U.S. district courts on
15 U.S. patent matters for about 35 years. Many of my colleagues during my years of
16 working together, here at Pryor Cashman and while I was a partner at other law
17 firms, frequently call me for my advice and counsel.

18 32. I have taken lead on all matters relating to this case, including the
19 defense to its initiation by Plaintiff in the U.S. District Court for the Eastern
20 District of Texas, the reexamination proceedings in the U.S. Patent Office, the
21 motions to transfer and to stay, as well as the recent opposition to Plaintiff's
22 motion to lift the stay and re-open the case. I have received assistance and support
23 from a number of Pryor Cashman attorneys and other professionals in my handling
24 thereof, but no other single attorney or professional has expended nearly as much
25 time nor effort as me in connection with handling this case. There is no
26 established core team associated with this case beyond me. Rather, I would, as
27 needed, draw upon and ask for help, work, and/or legal advice from our available
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1 other partners, associate attorneys, paralegals, and clerks at Pryor Cashman. That
2 is the reason why the list of personnel providing services to these Defendants in
3 this case includes a variety of different people. The Defendants, however, never
4 were billed for nor paid for any time spent for unnecessary “knowledge for
5 ramping up” to obtain a proper base by the others to provide services as I was
6 always the point and lead attorney and was fully knowledgeable about the case’s
7 facts and status at all times.

8 33. In 2009, I billed at an hourly rate of \$595, which increased annually to
9 a final hourly billing rate, in 2015, of \$690. However, due to Pryor Cashman’s
10 relationship with Defendants, courtesy discounts were periodically offered and
11 applied, ultimately totaling approximately 15% for each set of Defendants. When
12 discounted by this amount, my adjusted hourly billing rate was about \$505.75 in
13 2009, increasing annually to \$586.50 in 2015.

14 34. My rates are on the low end of reasonable in New York, where Pryor
15 Cashman is located. *See, e.g., Regulatory Fundamentals Group LLC v.*
16 *Governance Risk Mgmt. Compliance, LLC*, No. 13 Civ. 2493 (KBF), 2014 U.S.
17 Dist. LEXIS 135600, at *3 (S.D.N.Y. Sept. 24, 2014) (“In recent years, New York
18 district courts have approved rates for experienced law firm partners in the range of
19 \$500 to \$800 per hour.”). Moreover, these rates are reasonable in light of the
20 prevailing average rates in the Los Angeles area as well. *See, e.g., Perfect 10, Inc.*
21 *v. Giganews, Inc.*, No. CV 11-07098-AB (SHx), 2015 U.S. Dist. LEXIS 54063, at
22 *47 (C.D. Cal. Mar. 24, 2015) (“[T]he American Intellectual Property Law
23 Association (‘AIPLA’) Report of Economic Survey identified the median
24 intellectual property partner billing rate in Los Angeles as \$575 per hour in 2012,
25 and the median Los Angeles associate billing rate as \$395.”).

26 35. Due to the fact that this action has been ongoing for over six years and
27 has involved complex discovery, legal and technical issues before both this Court
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1 and the U.S. Patent Office, there have been a total of 26 attorneys and other
2 professionals who have provided assistance with the case at some point.

3 36. The hourly billing rate for every other Pryor Cashman attorney and
4 other professional is indicated in-line with each charge. Additional background
5 information regarding particular timekeepers can be provided by Pryor Cashman
6 upon request.

7 37. Although Defendants are seeking attorneys' fees, "[w]ork performed
8 by paralegals may be compensated as part of an attorney's fee award. . . .
9 Similarly, work performed by litigation support staff that directly support the
10 substantive litigation . . . is compensable as part of an attorneys' fee award."
11 *Perfect 10*, 2015 U.S. Dist. LEXIS 54063, at *62. Therefore, Defendants properly
12 include timekeepers other than attorneys.

13 38. As the lead attorney for Defendants' matters in this case, I reviewed
14 all time entries by attorneys and professional staff, including the rate and amount
15 of time billed for their work. In my experience, the hourly rates charged by each
16 of the timekeepers listed on Exhibits S and T are reasonable and well within
17 market rates, particularly given the courtesy discounts applied to Defendants'
18 invoices.

19 39. The time shown in Exhibits S and T were actually expended as well as
20 totally reasonable and necessary in light of the issues raised by Plaintiff's lawsuit.
21 All time listed was actually billed to and paid by Defendants. There has been no
22 duplicative billing of fees nor costs but, rather, Pryor Cashman split equally
23 between the Defendants (and their entities) the incurred fees and costs.

24 40. Filed concurrently herewith are Exhibits U and V, which list the costs
25 and expenses incurred by Defendants in connection with this case. Similar to the
26 attorneys' fees, I have reviewed the costs and expenses as they were invoiced to
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1 Defendants and can confirm that they were all expended, entirely reasonable and
2 necessary.

3 41. Defendants are seeking reimbursement of only those costs and
4 expenses listed in Exhibits U and V that were actually billed to, and paid by,
5 Defendants.

6 **DECLARATION REGARDING FACTS IN SUPPORT OF MOTION**

7 42. As stated above, I have been lead counsel on this case since its
8 inception, therefore I am familiar with all of the facts of the case. I have likewise
9 handled all settlement discussions that have occurred during the entire pendency of
10 this case.

11 43. Since the commencement of this action, Plaintiff has consistently
12 stalled providing Defendants with a settlement offer despite assurances that such
13 an offer would be forthcoming.

14 44. Plaintiff refused to even engage in any settlement discussions unless
15 and until Defendants first executed a confidentiality agreement that was entirely
16 superfluous, since all settlement discussions are already protected under Federal
17 Rule of Evidence 408(a), as Defendants indicated to Plaintiff. (*See Ex. O.*)
18 Nevertheless, Plaintiff refused to discuss settlement until this agreement was
19 executed.

20 45. Defendants, eager to begin settlement discussions, executed Plaintiff's
21 requested confidentiality agreement despite not believing the same to be necessary.
22 (*See Ex. P.*) Defendants did so on the understanding expressly provided by
23 Plaintiff's attorney, that, once the confidentiality agreement was executed, Plaintiff
24 would immediately provide a concrete settlement demand to Defendants. However,
25 no such demand was forthcoming.

26 46. Instead of making its promised settlement offer, Plaintiff then
27 demanded that Defendants provide the amount of gross revenues for the
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1 Defendants' concerts, during which the claimed invention of the Patent was
2 alleged to be used. (*See* Ex. Q.)

3 47. Although Defendants knew that gross revenues were utterly irrelevant
4 to Plaintiff because such revenues could not even theoretically form the basis of
5 Plaintiff's damages calculations, Defendants nevertheless, as a show of good faith,
6 directed Plaintiff to various websites estimating Defendants' gross revenues.
7 Instead of using those figures to come up with a reasonable settlement demand,
8 Plaintiff pushed back and demanded that Defendants certify these estimates, albeit
9 irrelevant to the issue of patent damages, to be within 5% of the actual gross
10 revenues. (*See* Ex. R.)

11 48. Moreover, on numerous occasions, Plaintiff, through and by its
12 counsel, Michael G. Burk, Esq., ominously warned Defendants that the case would
13 be very expensive for Defendants to defend and that Defendants should therefore
14 settle.

15 I declare under penalty of perjury that the foregoing is true and correct. This
16 declaration is executed on June 30, 2015, at New York, New York.

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18 /s/ Andrew S. Langsam
19 Andrew S. Langsam
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